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Copyright Royalty Board

[Consolidated Docket No. 14-CRB-0010-CD (2010-13)]

Distribution of 2010-13 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges announce settlement of controversies and requests for partial distribution of cable television distant retransmission royalties claimed by National Public Radio (NPR) and Music Claimants. National Public Radio appeared in this proceeding on its own behalf and on behalf of its NPR Members retransmitted as distant signals by cable television operators. Music Claimants include Broadcast Music, Inc. (BMI) and the American Society of Composers, Authors, and Publishers (ASCAP), as well as SESAC, Inc.

DATES: Comments are due on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: Submit electronic comments via email to crb@loc.gov. Those who choose not to submit comments electronically should see “How to Submit Comments” in the Supplementary Information section below for physical addresses and further instructions. This notice and request is also posted on the agency’s website (www.loc.gov/crb) and on Regulations.gov (www.regulations.gov).

FOR FURTHER INFORMATION CONTACT: Kimberly Whittle, Attorney-Advisor, by telephone at (202) 707-7658 or e-mail at crb@loc.gov.

SUPPLEMENTARY INFORMATION: Each year cable systems must submit royalty payments to the Register of Copyrights as required by the statutory license set forth in section

111 of the Copyright Act for the distant retransmission to cable subscribers of over-the-air television and radio broadcast signals. *See* 17 U.S.C. 111(d). The Copyright Royalty Judges (Judges) oversee distribution of royalties to copyright owners whose works were included in a qualifying retransmission and who timely filed a claim for royalties. Allocation of the royalties collected occurs in one of two ways. In the first instance, the Judges may authorize distribution in accordance with a negotiated settlement among all claiming parties. 17 U.S.C. 111(d)(4)(A). If all claimants do not reach agreement with respect to the royalties, the Judges must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 111(d)(4)(B). Alternatively, the Judges may, on motion of claimants and on notice to all interested parties, authorize a partial distribution of royalties, reserving on deposit sufficient funds to resolve identified disputes. 17 U.S.C. 111(d)(4)(C), 801(b)(3)(C).

National Public Radio

On December 6, 2016, the Judges received a joint motion¹ seeking distribution by stipulation to NPR of 0.16% of all cable royalty funds on deposit for royalty years 2010 through 2013, inclusive (2010-13 Funds) (NPR Motion). The Moving Parties confirm that no other claimant or category of claimants asserts a controversy regarding the funds allocated to NPR. The Moving Parties further agree that the distribution of royalties to NPR shall equal the value of its 0.16% settlement share minus the dollar value of partial distributions NPR has received to date for each of the 2010-13 Funds.² The stated amounts reflect a 0.16% share of the total funds on deposit as

¹ The Moving Parties included all other participants in this consolidated proceeding: Motion Picture Association of America, Joint Sports Claimants, National Association of Broadcasters and the Commercial Television Claimants, Music Claimants, Canadian Claimants Group, Settling Devotional Claimants, National Public Radio, Public Broadcasting Service and the Public Television Claimants, and Multigroup Claimants (collectively, the Moving Parties).

² The amounts that NPR received in partial distribution for each of the 2010-13 Funds can be found at <http://www.copyright.gov/licensing/distribution-fund.pdf>. To date, NPR has received a total of \$846,675.38 in partial distributions, as follows:

of the date of the final distribution to NPR for each of the years included in the 2010-13 Funds;³ the dollar amounts might vary as of the date of distribution, depending upon costs incurred for managing the funds and interest accrued on the funds. The Parties further stipulate and agree that these sums, once distributed, shall not be subject to repayment and that no additional sums shall be distributed to NPR in the future with respect to the 2010-13 Funds, and that NPR need not participate further in royalty distribution proceedings related to the 2010-13 Funds.

Music Claimants

On December 15, 2016, the Judges received a joint motion seeking distribution by stipulation to the Music Claimants from the cable royalty funds on deposit for royalty years 2010 through 2013, inclusive (2010-13 Funds) (Music Motion). The Moving Parties consist of all participants in this consolidated proceeding. In the Music Motion, the Moving Parties notified the Judges that they stipulate and agree that Music Claimants shall receive a share of each of the 2010-13 Funds as follows (the Music Claimants' Share):

Year	Basic Fund	3.75% Fund	Syndex Fund
2010	3.50%	3.50%	3.50%

2010: \$179,048.31 (distributed October 25, 2012)
2011: \$187,871.22 (distributed April 25, 2013)
2012: \$236,077.95 (distributed January 15, 2015)
2013: \$243,677.90 (distributed June 18, 2015)

³ The total funds for each of the years included in the 2010-13 Funds as of September 30, 2016, can be found at page 6 of <http://www.copyright.gov/licensing/financial-statements/operating/sep2016.pdf> (chart tracking cable royalties entitled "Growth in the Copyright Royalty Funds As of September 30, 2016"). Recognizing that the amount of NPR's 0.16% settlement share will be determined as of the date of the final distribution to NPR, at least as of September 30, 2016, the total funds attributable for each of the years included in the 2010-13 Funds (calculated by adding the amounts already distributed and the "Funds Available for Distribution" as of September 30, 2016) were reported as follows:

Cable	Distributed	Funds Available for Distribution	Fund Total	Percent Growth
2013	\$ 135,376,610.47	\$ 90,865,875.68	\$ 226,242,486.15	3.363%
2012	131,154,417.29	87,726,471.99	218,880,889.28	4.699%
2011	104,372,898.09	104,683,702.75	209,056,600.84	4.919%
2010	99,471,281.18	99,783,533.64	199,254,814.82	15.577%

2011	3.50%	3.50%	3.50%
2012	3.55%	3.55%	3.55%
2013	3.55%	3.55%	3.55%

The Moving Parties stipulate that the value of the Music Claimants' Share is as listed as above, minus the dollar value of partial distributions of the 2010-13 Funds that Music Claimants have received to date.⁴ The Licensing Office will calculate the Music Claimants' Share of the total funds as of the date of the distribution to Music Claimants for each of the years included in the 2010-13 Funds, including interest accrued to the date of distribution and excluding (1) the distribution to NPR of its 0.16% share as specified in the December 6, 2016, NPR Motion and (2) taxable costs incurred by the Department of Licensing.

The Moving Parties represent that there are no outstanding inter- or intra-category controversies regarding the claims in the Music Claimant category. The Parties further stipulate and agree that these sums shall not be subject to repayment once distributed, that Music Claimants need not participate further in royalty distribution proceedings related to the 2010-13 Funds, and that no additional sums shall be distributed to Music Claimants in the future with respect to the 2010-13 Funds, provided that Music Claimants shall be entitled to receive the Music Claimants' Share of any additional royalties deposited into any of the 2010-13 Funds due to any audit of any cable system operator's Statement of Account pursuant to 37 C.F.R. § 201.16 that Music Claimants joined as participating copyright owners.

The Moving Parties' further stipulate that the terms described in the Music Motion represent a compromise and settlement and apply to the 2010, 2011, 2012, and 2013 Cable Royalty Distribution Proceedings only; no party accepts the requested allocation as precedent

⁴ The amounts Music Claimants have received in partial distribution for each of the 2010-13 Funds are available at <http://www.copyright.gov/licensing/distribution-fund.pdf>.

and no party admits to any principle underlying stipulated amounts of the Music Claimants' Share.

Partial Distribution

The Moving Parties therefore request the Judges to order a partial distribution of royalties to NPR in the agreed amounts and a partial distribution to Music Claimants in the agreed amounts pursuant to section 801(b)(3)(C) of the Copyright Act.⁵ 17 U.S.C. 801(b)(3)(C). That section requires that, before ruling on the motion, the Judges publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any claimant entitled to receive the subject royalties has a reasonable objection to the requested distribution. Accordingly, this Notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distributions to NPR or Music Claimants described in this Notice. Parties making objection to the partial distribution must advise the Judges of the existence and details of all objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution motion that come to their attention after the close of the comment period.

The Judges have caused the joint motion regarding NPR and the joint motion regarding Music Claimants to be posted on the Copyright Royalty Board web site at <http://www.loc.gov/crb>.

How to Submit Comments

⁵ The requested distributions represent partial distributions of the 2010-13 Funds, but not partial distributions to NPR or the Music Claimants, whose claims are satisfied by the requested distributions.

Interested members of the public must submit comments to only **one** of the following addresses. If not commenting by email or online, commenters must submit an original of their comments, five paper copies, and an electronic version on a CD.

Email: crb@loc.gov; or

Online: www.regulations.gov; or

U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue SE, Washington, DC 20559-6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue SE, Washington, DC 20559-6000.

Dated: January 17, 2017.

Suzanne M. Barnett
Chief U.S. Copyright Royalty Judge

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